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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION
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15 HYPERMEDIA NAVIGATION LLC,
16 Plaintiff,
17 v.
18 FACEBOOK, INC.,
19 Defendant.

Case No. 4:17-cv-05383-HSG

**STIPULATION AND ~~PROPOSED~~ ORDER
RE: DISCOVERY OF ELECTRONICALLY
STORED INFORMATION FOR PATENT
LITIGATION**

1 Upon the stipulation of the parties, the Court ORDERS as follows:

2 1. This Order supplements all other discovery rules and orders. It streamlines
3 Electronically Stored Information (“ESI”) production to promote a “just, speedy, and inexpensive
4 determination of this action, as required by Federal Rule of Civil Procedure 1.”

5 2. This Order may be modified in the Court’s discretion or by stipulation. If a party
6 wishes to modify this agreement but the parties do not agree to the proposed modifications, the
7 parties shall jointly submit their competing proposals and a summary of the dispute.

8 3. As in all cases, costs may be shifted for disproportionate ESI production requests
9 pursuant to Federal Rule of Civil Procedure 26. Likewise, a party’s nonresponsive or dilatory
10 discovery tactics are cost-shifting considerations.

11 4. A party’s meaningful compliance with this Order and efforts to promote efficiency
12 and reduce costs will be considered in cost-shifting determinations, but nothing in this order shall
13 affect a producing party’s right to seek reimbursement for costs associated with collection, review,
14 and/or production of ESI.

15 5. Absent a showing of good cause, general ESI production requests under Federal
16 Rules of Civil Procedure 34 and 45, or compliance with a mandatory disclosure requirement of this
17 Court, shall not include metadata.

18 6. General ESI production requests under Federal Rules of Civil Procedure 34 and 45
19 shall not include email or other forms of electronic correspondence (collectively “email”). The
20 parties have agreed that emails will not be searched or produced. (Dkt. No. 30).

21 7. The parties shall not be required to suspend automated deletion that is associated with
22 electronic databases, server log files, or backup or disaster recovery systems. With respect to web
23 pages, the parties need only make good faith efforts to preserve the source code responsible for
24 responsible for the dynamic generation of such pages, not the actual content(s) of such pages.

25 8. Absent agreement of the parties or further order of this court, the following
26 parameters shall apply to ESI production:

27 a. General Document Image Format. ESI shall be produced electronically,
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1 either in native format or as single page, uniquely and sequentially numbered TIFF image files no
2 less than 300 dpi resolution to enable the generation of searchable text using Optical Character
3 Recognition (“OCR”). Where text may be extracted when the TIFF image file is generated, the
4 image file shall be accompanied by a text file containing the extracted text. The text files shall be
5 named to match the endorsed number assigned to the image of the first page of the document. The
6 Producing Party shall apply an OCR process to produced image and text files to generate text
7 searchable files. The images and text files shall also be accompanied by image cross-reference load
8 files in the formats reasonably requested by each party providing the beginning and ending endorsed
9 number of each document and the number of pages it comprises. The Producing Party shall also
10 provide a data load file (“Data Load File”) corresponding to the TIFF image files and the full text
11 files. Data Load Files will be provided in Relativity style (.opt and .dat) format or in the format
12 requested by each Party. Unless specifically required, documents produced prior to the entry of this
13 order do not need to be reproduced to meet the requirements in this section.

14 b. Production Numbers. Each document image shall contain a footer with a
15 sequentially ascending production number, provided that, if a footer would obstruct any information
16 on the document image, the sequentially ascending production number may be affixed to an
17 alternative location on the document image.

18 c. Production Media. Subject to the terms of the Protective Order in this case,
19 documents shall be produced by electronic file sharing technologies such as FTP or on external hard
20 drives, readily accessible computer(s) or electronic media such as CDs, DVDs USB drives
21 (“Production Media”); and production by email is acceptable provided that the receiving party’s
22 designated email address for accepting service of the production is used, and the producing party
23 has not received any error or return message indicating that the service email was not received or
24 sent successfully. Each piece of production media should identify: (1) the producing party’s name;
25 (2) the production date; and (3) the Bates Number range of the materials contained on the Production
26 Media.

27 d. Unitizing Of Documents. Distinct documents should not be merged into a
28 single record, and single documents should not be split into multiple records (i.e., paper documents

1 should be logically unitized). The parties will use reasonable efforts to unitize documents correctly.

2 e. Native Files. A party is not required to produce the same ESI in more than
3 one format. After initial production of electronic documents in electronic file format has occurred,
4 a party may request that specific documents or file types be produced in native format by specifically
5 identifying to the producing party the Bates number of the document sought and the basis for the
6 request for production in native format. The parties should then meet and confer in good faith to
7 determine whether production in an alternative format is necessary. A party shall not make unduly
8 burdensome and unreasonable requests for production of documents in native format, and a party
9 shall not unreasonably refuse a request for the production of documents in native format.

10 f. No Backup Restoration Required. Absent a showing of good cause, no party
11 need restore any form of media upon which backup data is maintained in a party's normal or allowed
12 processes, including but not limited to automated disaster recovery backup systems, backup tapes,
13 disks, SAN, RAM or temporary files, history, cache, cookies, server, system, or network logs, and
14 other forms of media, to comply with its discovery obligations in the present case.

15 g. Duplicate Documents. If copies of a responsive document are stored at more
16 than one location within a party's possession, custody, or control, the producing party shall not be
17 required to search for or produce more than one such copy of the responsive document absent a
18 showing of good cause that the production of such additional copies is necessary. With respect to
19 documents that automatically save, only the most recent version of such documents existing at the
20 time of collection need be searched.

21 h. Source Code. To the extent relevant to the litigation, source code will be
22 made available for inspection pursuant to the terms of the Protective Order.

23 9. Pursuant to Fed. R. Evid. 502(d) and (e), the production of a privileged or work
24 product-protected document, whether inadvertent or otherwise, is not a waiver of privilege or
25 protection from discovery in the pending case or in any other federal or state proceeding. Disclosures
26 among defendants' attorneys of work product or other communications relating to issues of common
27 interest shall not affect or be deemed a waiver of any applicable privilege or protection from
28 disclosure. For example, the mere production of privileged or work-product-protected documents

1 in this case as part of a mass production is not itself a waiver in this case or in any other federal or
2 state proceeding. A producing party may assert privilege or protection over produced documents at
3 any time by notifying the receiving party in writing of the assertion of privilege or protection.
4 Information that contains privileged matter or attorney work product shall be returned immediately
5 or destroyed if such information appears on its face to have been inadvertently produced, or if
6 requested. The receiving party must return, sequester, or destroy ESI that the producing party claims
7 is privileged or work product protected as provided in Rule 26(b)(5)(B) and may use such ESI only
8 to challenge the claim of privilege or protection.

9 10. No Party is required to identify on its respective privilege log any document or
10 communication dated after the filing of the Complaint. The parties shall exchange their respective
11 privilege logs at a time to be agreed upon by the parties following the production of documents, or
12 as otherwise ordered by the Court.

13 11. All produced documents and materials must be stored and maintained by the
14 receiving party at a location and in a secure manner that ensures that access is limited to the persons
15 authorized under the Protective Order in this case.

16 12. The parties may use keyword searches to assist in identifying relevant, non-privileged
17 ESI responsive to requests for production. The parties shall not be required to search for or preserve
18 information stored at locations that are inaccessible or accessible only through extraordinary
19 measures, including backup systems/tapes, disaster recovery systems, residual, deleted, fragmented,
20 damaged or temporary data, and/or encrypted data where the key or password cannot be ascertained
21 after reasonable efforts. Absent a showing of good cause, voicemails, instant messaging systems,
22 personal digital assistants, mobile phones, and social media are deemed not reasonably accessible
23 and need not be collected and preserved.

24 13. Nothing in this Order prevents the parties from agreeing to use technology assisted
25 review and other techniques insofar as their use improves the efficacy of discovery. Such topics
26 should be discussed pursuant to the District's E-Discovery Guidelines.

27 14. Except as expressly stated, nothing in this Order affects the parties' discovery
28 obligations under the Federal or Local Rules.

1 **IT IS SO STIPULATED**, through Counsel of Record.

2 Dated: July 24, 2018

NI, WANG & MASSAND, PLLC

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/s/ Hao Ni

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Hao Ni

Attorneys for Plaintiff

HYPERMEDIA NAVIGATION LLC

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Dated: July 24, 2018

COOLEY LLP

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/s/ Heidi H. Keefe

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Heidi L. Keefe

Attorneys for Defendant

FACEBOOK, INC.

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FILER'S ATTESTATION

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Pursuant to Civil Local Rules 5.1(i)(3), I attest that concurrence in the filing of the document
has been obtained from each of the other signatories above.

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Dated: July 24, 2018

COOLEY LLP

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/s/ Heidi H. Keefe/

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Heidi L. Keefe

Attorneys for Defendant

FACEBOOK, INC.

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IT IS ORDERED that the forgoing Agreement is approved.

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Dated: 8/6/2018


Hon. Haywood S. Gilliam, Jr.
UNITED STATES DISTRICT COURT

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